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No. 83-1386

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

HON. RONALD A. LEGGETT, etc., et al.,
Petitioners,

vs.

CRATON LIDDELL, et al.,
Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Eighth Circuit

REPLY BRIEF FOR PETITIONERS

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QUESTION PRESENTED

1. Whether the holding of the court of appeals that the remedial powers of federal courts include the power to order tax increases and bond issues, after certain preliminary inquiries concerning necessity, presents a question warranting review on certiorari, even though ongoing tax proceedings pursuant to the mandate of the court of appeals are not yet complete?

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STATEMENT OF THE CASE

Following remand by the court of appeals, the district court has undertaken energetically to supervise the substantial appropriations and taxation process thrust upon it by the opinion of the court of appeals. A budget review committee has been appointed. See Order H(2945)84,[1] filed March 8, 1984. Reports have been filed by that committee and by its chairman. See Budget Review Committee Report on Proposed 1984-85 Settlement Plan Budgets, H(3114)84, filed May 21, 1984; Budget Review Committee Chairperson's Report on the Amount of a Proposed Bond Issue, H(3214)84, filed July 11, 1984; Budget

[1] These references are to district court docket entry numbers.

Review Committee Report and Chairperson's Recommendations on City Board's Alternatives and Sources for Funding the Settlement Plan, H(3239)84, filed July 16, 1984. The Board of Education of the City of St. Louis ("St. Louis School Board") has urged the district court to impose a $2.33/$100 tax increase. See City Board's Motion for Order Approving Budget and Establishing Adequate Funding, H(3192)84, filed June 29, 1984. The chairman of the district court's budget review committee, in a specific report on the financial needs of the Board of Education of the City of St. Louis, has recommended a school tax increase of $1.70/$100 in the City of St. Louis. See Budget Review Committee Report and Chairperson's Recommendations on . . . Sources for Funding, H(3239)84, supra at 8-9, 11.

At the present time, the district court has reduced substantially the sums demanded by the St. Louis School Board to implement the settlement in 1984-85 (from over $100,000,000 to approximately $50,000,000, exclusive of capital improvements and student transfer payments). See Order H(3220)84, filed July 11, 1984. A magistrate has found that the School Board lacks sufficient funds to pay for its settlement programs, but recommended that the district court refrain from ordering a school property tax increase for the present, pending exhaustion of certain other alternatives. See Report and Recommendation of United States Magistrate, H(3331)84, filed August 15, 1984. However, the magistrate's recommendation (and, indeed, the district court's budget reductions in general) have been sharply attacked by the St. Louis School Board, which has also appealed the district court's July orders. See Objections of the Board of Education to Report and Recommendation of the United States Magistrate, H(3346)84, filed August 27, 1984; Notice of Appeal, H(3367)84, filed September 10, 1984. Although another school tax election may occur in November, the motion of the St. Louis School Board seeking a $2.33/$100 property tax increase is still under submission before the district court.

ARGUMENT

I.

The Question Of The Existence Of A Remedial Judicial Power To Tax, As Held By The Court Of Appeals, Is Ripe For Review By This Court.

Respondents[2] contend that the serious and substantial questions presented by the petitioners in No. 83-1386 should be disregarded by this Court, because any ruling by this Court would be "purely advisory," absent an order below actually increasing property taxes. Consolidated Brief of Liddell, et al., at 24. Respondents argue that the injunction against a school tax reduction in 1983 was not an increase. The United States cavalierly dismisses the petition in No. 83-1386 as "premature". Brief for the United States at 34.

Respondents are correct in observing that an additional school tax rate increase[3] has yet to be ordered below. Nevertheless, the question of the existence of a remedial judicial power to tax, expressly decided by the court of appeals, is plainly significant and is ripe for review by this Court. There is nothing hypothetical in this question. The settlement agreement at issue here explictly prescribed funding by "a tax rate increase in the City of St. Louis as shall be ordered by the Court." No. 83-1386 App. A-127. Rejecting arguments similar to those raised here, the court of appeals directly addressed this issue and squarely held that "the district court's broad equitable powers

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[2] As used herein, this term includes the private plaintiffs below, the intervening teachers union, the United States, and the eighteen school districts who have filed a brief in this Court. Oddly, five of the school districts who joined in the settlement have not opposed the petition in this Court.

[3] Petitioners cannot agree that prevention of a tax decrease is not a tax increase. Respondents' contention to the contrary is specious.

to remedy the evils of segregation include a narrowly defined power to order increases in local tax levies on real estate." *Liddell v. State of Missouri,* 731 F.2d 1294, 1320 (8th Cir. 1984) (en banc). That court also included the power to order bond issues in the remedial powers of the federal courts. *Id.* at 1322; No. 83-1386 App. K, A-448-A-456.

In response to this holding by the court of appeals, the district court is now enmeshed in the complex legislative undertaking of taxation and spending foreseen by petitioners, see Petition at 28-29. The question of what the school tax rate in the City of St. Louis shall be in 1984 has been removed from the control of the people to the control of the district court. The respondents, especially the St. Louis School Board, are in a poor position to contend that the issue of remedial judicial taxation is hypothetical, when they are currently before the district court urging it to increase taxes (and apparently intend to argue in their latest appeal that the district court has erred in not raising taxes sooner). The district court proceedings are the direct result of the holding of the court of appeals that such a power exists.[4] The questions presented in No. 83-1386 are questions of law directly decided in the judgment below; petitioners do not seek review of a "statement", but of an aspect of the judgment below which is having current, significant consequences.

While the district court did in fact effect a tax increase for the 1983-1984 school year, both the court of appeals and respondents here contend that since it was ordered and implemented, the status quo should not be altered. Now, prior to the entry of any order increasing taxes for 1984-1985,

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[4] Respondents' argument in favor of the existence of the judicial power to tax badly misstates the holding of *Virginia v. West Virginia,* 246 U.S. 565 (1918). See Consolidated Brief of Liddell, et al. at 25 n. 27. The question of the power of a federal court to mandate a tax increase as an original proposition was deliberately and expressly left open by that decision. 246 U.S. at 604-05.

respondents contend that the issue is premature. As respondents note, the St. Louis School Board's financial obligations and its ability to meet those objections must be assessed annually under the order approving the settlement agreement. See Consolidated brief of Liddell, et al., at 14 n. 14. If the St. Louis School Board is unable to fund its share of the plan out of its available resources, as it contended for 1983-1984 and as it now contends for 1984-1985, the district court is authorized to raise property taxes for this purpose. Yet, in the view of respondents, such an order would never be subject to review: before the entry of such an order, review would be premature; afterwards, equity would dictate maintenance of the status quo.

The order enjoining the property tax rollback in St. Louis under Proposition C (Mo. Rev. Stat. §164.013) was entered July 5, 1983. Pursuant to that order, taxes based on this higher tax rate were collected. (Such taxes were by statute due and payable by December 31, 1983.) The court of appeals' decision was entered February 8, 1984. It is now the beginning of the 1984-1985 school year, with no resolution of the 1983-1984 tax issue and a motion pending for a much more drastic order for the 1984-1985 school year.[5] In short, the St. Louis School Board seeks repetition by the district court of the exercise of the power to tax, while attempting to prevent review by this Court of the constitutional predicate for any such order.

That there is a series of decisional steps prior to the actual entry of an order does not necessarily render a case not ripe for adjudication. *Regional Rail Reorganization Act Cases*, 419 U.S.

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[5] In addition, petitioner Legett is defendant in a number of tax protest actions filed in state court by reason of the district court's July 5, 1983 order. E.g., *Laclede Gas Co. v. Leggett*, Mo. Circuit Ct., St. Louis, No. 844-00093. He has filed a motion in the district court to compel a refund of the tax money at issue by the St. Louis School Board, in light of the School Board's $14,000,000 surplus at the end of its 1983-84 fiscal year. See Motion for Order Compelling Refund of Taxes, H(3238)84, filed July 16, 1984.

102, 138-146 (1974). This Court has frequently addressed important questions directly presented by a lower court's judgment, even though there were changed circumstances which arguably rendered the question moot, so long as the lower court's judgment could be seen as having a current, identifiable impact on the parties, and especially when the question presented on appeal or certiorari was one which would likely renew itself in subsequent proceedings.[6] See *Whitcomb v. Chavis,* 403 U.S. 124 (1971) (constitutionality of multi-member legislative districts addressed, because district court had retained jurisdiction, even though districts had been abolished by legislature in interim); *Pittsburgh v. Alco Parking Corp.,* 417 U.S. 369 (1974) (constitutionality of a tax addressed even though tax repealed during pendency of the case, where decision would affect right to refund of taxes paid under old law); cf. *Village of Belle Terre v. Boraas,* 416 U.S. 1 (1974) (possible future economic impact of zoning ordinance restricting number of unrelated persons in house prevented issue of ordinance's constitutionality from becoming moot).

The funding mechanism of the settlement agreement, in particular the authority of the district court to raise property taxes in the City of St. Louis for school purposes, is the key to the plan itself. By its own terms, the plan is contingent upon the district court making available funds sufficient to carry out the plan. The court of appeals has prescribed a course to be follow-

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[6] Thus, the rather far-fetched suggestion of the United States, brief at 35, that the judgment below should be summarily vacated on the petition in No. 83-1721, is hardly practicable, since the St. Louis School Board and other parties below may once again seek (and, indeed, are currently seeking) tax increases from the district court. Merely vacating the judgment below would needlessly subject the parties to a rerun of proceedings which have already consumed more than a year, without coming any closer to a resolution of the most critical questions in this case: the existence and scope of remedial taxation powers of federal courts.

ed by the district court in seeking to raise taxes, and that course is being pursued. It is thus appropriate that the linchpin of the settlement agreement, the authority of the district court to provide the St. Louis School Board with additional funds by court-ordered taxation, be reviewed at this time. For all that is praiseworty in the settlement, it raises momentous questions concerning the judicial power of the United States, questions which ought to be settled by this Court.

CONCLUSION

The petition for certiorari in No. 83-1386 ought to be granted.

Respectfully submitted,

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